Supreme Court, U.S.
FILED

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No. _____

In the
SUPREME COURT OF THE UNITED STATES

Zena D. Crenshaw, *Petitioner,*

v.

Berry Baynerd, et. al., *Respondents.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Zena D. Crenshaw, *Petitioner Pro Se*
CRENSHAW PROFESSIONAL OFFICES
4581 Broadway Gary, IN 46409
(219)980-2055 [fax](219)887-8109

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Question Presented

1. Whether the United States Court of Appeals transgressed the petitioner's right to due process and equal protection by dismissing her complaint brought against the respondents under 42 U.S.C. § 1983, based on quasi-judicial immunity and its determination that she asserted ". . . nothing more than a right to process . . .", when Indiana principles of statutory construction and administrative law sanction the redress she seeks for alleged violation of her constitutionally protected liberty and property interests.

List of Parties

BERRY BAYNERD, personally and not as a member of the Indiana Civil Rights Commission;

ALPHA BLACKBURN, personally and not as a member of the Indiana Civil Rights Commission;

DAVID A. CARTER, personally and not as a member of the Indiana Civil Rights Commission;

JOHN E. GARCIA, personally and not as a member of the Indiana Civil Rights Commission;

ALVIN PIERCE, personally and not as a member of the Indiana Civil Rights Commission;

BETH Y. QUARLES, personally and not as a member of the Indiana Civil Rights Commission;

JANE J. NASMITH, personally and not as a member of the Indiana Civil Rights Commission;

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In the
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Zena D. Crenshaw, *Petitioner,*

v.

Berry Baynerd, et. al., *Respondents.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

Zena D. Crenshaw respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, affirming a judgment of the United States District Court for the Southern District of Indiana, dismissing her complaint brought against the respondents under 42 U.S.C. § 1983 and its order denying her subsequent motion to amend findings and the judgment accordingly.

Opinions Below

The opinion of the court of appeals and district court are unreported and set forth, respectively, as Appendix B and Appendix D.

Jurisdiction

On June 14, 1999, the court of appeals entered its judgment

affirming a judgment by the United States District Court for the Southern District of Indiana, dismissing with prejudice Ms. Crenshaw's complaint brought against the respondents under 42 U.S.C. § 1983 and its order denying her subsequent motion to amend findings and the judgment accordingly. (App D). Ms. Crenshaw did not seek rehearing before the appellate court. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

The jurisdiction of the district court was invoked pursuant to 28 U.S.C. §1331.

Statement of the Case

The petitioner is an African-American, female attorney, practicing law primarily in Lake County, Indiana at all relevant times. On April 28, 1998, she brought an action under 42 U.S.C. § 1983 against the respondents in their respective, personal capacity before the United States District Court for the Southern District of Indiana at Indianapolis. (Cmplt, Doc#). The respondents comprised the Indiana Civil Rights Commission (ICRC) at all relevant times. Ms. Crenshaw's federal complaint against them advances the following theories:

> 20. The defendants and each of them, knowingly, intentionally, willfully and wantonly, denied the plaintiff a full investigation of charge PAse97060461 as contemplated by 910 IAC 1-3-2(a), as part of a scheme to cover-up allegations of impropriety associated with the state courts of Indiana, in reckless disregard of the plaintiff's civil and constitutional rights and in contravention of the public policy for the State of Indiana;
>
> 21. The defendants and each of them, knowingly, intentionally, willfully and wantonly, deprived the plaintiff of an impartial tribunal before which to prosecute the claims of charge PAse97060461, as part of a scheme to cover-up allegations of impropriety associated with the state courts of Indiana, in reckless

disregard of the plaintiff's civil and constitutional rights and in contravention of the public policy for the State of Indiana;

22. The defendants and each of them, knowingly, intentionally, willfully and wantonly, subjected or caused the plaintiff to be subjected to the deprivation of rights, privileges and/or immunities secured by the Constitution and laws of the United States and the State of Indiana as part of a scheme to cover-up allegations of impropriety associated with the state courts of Indiana;

(Cmplt, Doc# 1, p 9-10).

The referenced Charge PAse97060461 was filed with the ICRC on or about July 10, 1997. It essentially alleges that the Honorable Jeffery J. Dywan entered a judgment exceeding $14,000 against Ms. Crenshaw as plaintiff's counsel, in clear absence of all jurisdiction, motivated by unlawful race and/or sex discrimination and effectively denying her access to the services and facilities that Room One (1) of the Lake Superior Court, civil division, provides white and male attorneys, duly licensed to practice law.

On or about November 5, 1997, the ICRC administratively closed Charge PAse97060461, finding that it lacked jurisdiction for the following reason:

> Complainant is disputing the ruling of a Superior Court. The Indiana Civil Rights Commission does not have the authority to overrule the decision of the Superior Court. Even if the Commission had jurisdiction, the evidence failed to show that race and sex had anything to do with the decision made by the judge.

On or about November 20, 1997, the Commission issued a "Corrected Notice", finding as follows:

> Complainant is disputing the ruling of a Superior

> Court. The Indiana Civil Rights Commission does not have the authority to overrule the decision of the Superior Court.

In response to Ms. Crenshaw's appeal of its finding, the ICRC adopted the following order:

> On November 20, 1997, the Indiana Civil Rights Commission entered a finding of No Probable Cause. Complainant filed a written request for reconsideration of said finding. The undersigned Commissioner was appointed by the Chairman to review and rule on such request.
>
> Having considered the results of the investigation submitted by the Director and the basis for the Request for Reconsideration by the Complainant, and being duly advised in the premises, it is hereby determined that:
>
> 1. The finding should be upheld; and
> 2. The complaint shall be dismissed.
>
> Dated: March 27, 1998 — s/Alpha Blackburn, COMMISSIONER
>
> Adopted by the Indiana Civil Rights Commission on:
>
> Dated: March 27, 1998 — s/Alpha Blackburn, Chair

The respondents' subsequent motion to dismiss contends that ". . . the decision whether to exercise jurisdiction over (Ms. Crenshaw's) charge was of a judicial nature . . . " (Mtn To Dsms, Doc #16, p 1). They acknowledge that she ". . . filed a charge of discrimination . . . invoking the Commission's jurisdiction to investigate complaints of discrimination . . . " (Sptng Memo, Doc #17, p 1).

Defense counsel suggested that as early as November 5, 1997, ". . . the Commission had in fact investigated Crenshaw's claim and

found it to be without merit, but opted not to reach a conclusion in light of the jurisdictional issue." (Sptng Memo, Doc #17, ftnt 2). The ICRC Executive Director reports otherwise:

> In the Crenshaw case, the decision to dismiss was based upon acts alleged to have occurred in Judge Dywan's official capacity. Accordingly, I believe the matter is not within our jurisdiction, and therefore, no investigation based on the merits of the case, has yet been conducted. Please kn v that I plan to issue a corrected notice of administrative dismissal which deletes the improper and inaccurate statement that 'evidence failed to show that race and sex had anything to do with the decision made by the judge.'
>
> That statement is not an accurate depiction of the status of this case. The statement implies that the merits of Ms. Crenshaw's complaint have been investigated and sufficient evidence has been developed for this agency to assert a finding on the merits of her allegations. Accordingly, the order will be corrected.
>
> (Pltf Exhibits, Doc #22, Exhibit A, p 2). (emphasis added).

Without additional input, the trial court essentially determined that Charge PAse97060461 was fully investigated, apparently as a matter of law. (App B, p 4).

> The district court specifically ruled:
>
> The ICRC determined that the nature of Crenshaw's complaint was a challenge to the ruling of an Indiana state court. The ICRC then determined that it had no authority to determine whether the challenged ruling was tainted by illegal race or gender-based motives. These determinations may not have required much of a fact-based "investigation," but there is no doubt that the ICRC assessed Crenshaw's complaint and through that assessment-the "investigation" which Crenshaw seems to contend was skipped-performed the adjudicative task

> for which its members are entitled to absolute immunity.
>
> (App B, p 4).

Ms. Crenshaw subsequently moved the court ". . . to address the responsibilities and purported authority pursuant to which Charge PAse97060461 was 'assessed'; any and all limitations on the immunity it prescribes to the (respondents); whether any such limitation impacts the present case; and the nature of any such impact." (Ver Mtn Amd, Doc#25). Her motion was denied on August 3, 1998, reportedly because ". . . the court's recitation of the issues and resolution of them . . . were correct." (App C, p 6).

Reasons for Granting the Writ

Writing for the United States Court of Appeals, Circuit Judge Kanne acknowledges a practical consideration, apparently motivating the judgment at issue to some extent:

> We note, furthermore, that Crenshaw has already received a remedy for what she perceived as Judge Dywan's improper sanctions against her and her client. At oral argument Crenshaw revealed for the first time that the sanctions had been reversed by the Indiana Court of Appeals. *Crenshaw, Sanchez, et. al. v. Hoffman-LaRoche, Inc.*, No. 45A03-9709-CV-306 (Ind. Ct. App. Aug. 18, 1998) (unpublished disposition).
>
> (App D, p 12).

If we characterize the referenced sanction as a "symptom", reasonable minds may differ as to the amount of comfort Ms. Crenshaw should take in having it successfully "treated" by the Indiana Court of Appeals. Having participated on the panel disposing of what is now petition number 99-73 before this Court, *Zena D. Crenshaw v. Randall T. Shepard, et. al.*, Judge Kanne has been advised that the sanction may

signal unlawful discrimination infecting courtrooms of Lake County, Indiana. (*See, Zena D. Crenshaw v. The Supreme Court of Indiana,* Cause No. 98-2882 before the U.S. Court of Appeals, Seventh Circuit at Chicago, Ill; Applnt's Brf, p 6). The record of that somewhat factually if not legally related case confirms that African-American attorneys, private civil rights organizations, state and local politicians, churches and a host of private citizens consider systematic, judicial, race and/or gender bias, a diagnosis worth ruling out in Lake County, Indiana. (*See, Crenshaw*, Cause No. 98-2882, 7th Circuit; Pltf's Brf w Exhibits, Doc#13).

Ms. Crenshaw directed the respondents to apparent bias against minority attorneys prosecuting relatively complex personal injury cases such as the lawsuit prompting the disputed sanction against her and her client, an indigent, minor child. The ICRC afforded Ms. Crenshaw's last opportunity for state intervention as a civil rights matter given the Indiana Judicial Qualifications Commission closed it with no apparent investigation or merit finding. Ms. Crenshaw and the community of Lake County, Indiana suffered a great loss when the respondents responded likewise. An ICRC investigation could have have boosted local confidence in the judiciary, proving it publicly accountable though based on private merit selection. The requested writ should issue in this case because the respondents are accountable for thwarting such possibilities.

I. The United States Court of Appeals seemingly undertakes the duty of giving effect to the intention of the Indiana legislature which promulgated the state's civil rights statute, without heeding the admonition of the Indiana Court of Appeals to ". . . read (the) Act's sections as a whole and strive to give effect to all of the provisions, . . . so that no part is held meaningless if it can be reconciled with the rest of the statute."

a. The Section's dictate that "(t)he commission shall receive and investigate complaints alleging

discriminatory practices" remains unreconciled and of no effect on the record at hand.

The outcome of this case hinges on statutory construction, but the analysis is not as subjective as the United States Court of Appeals suggests when it essentially concludes that Ms. Crenshaw's contentions are misguided:

> She argues that the defendants violated her right to due process, presumably under the Fourteenth Amendment, because they dismissed her complaint without complying with what she perceives to be an Indiana statutory mandate to investigate all charges filed with the ICRC. *See* Ind. Code § 22-9-1-6(e) (1998).
>
> (App D, p 11). (emphasis added).

The Indiana Court of Appeals defines a formula for statutory construction:

> We do not and may not interpret a statute that is facially clear and unambiguous. Rather, we give the statute its plain and clear meaning.
>
> *Citizens Action Coalition v. Statewide*, 693 N.E.2d 1324 at 1327 (Ind. App. 1998). (citation omitted).

The intermediate state court noted:

> By reading the plain language of the (code) we carry out our primary duty of giving effect to the intention of the (legislative) body that promulgated the (statute).
>
> *Elliott v. State*, 690 N.E.2d 774 at 777 (Ind. App. 1998). (citation omitted). (emphasis added).

The United States Court of Appeals seemingly undertakes this duty in

the present case without heeding the Indiana Court of Appeal's admonition to ". . . read an Act's sections as a whole and strive to give effect to all of the provisions, . . . so that no part is held meaningless if it can be reconciled with the rest of the statute." *See, Citizens Action Coalition at 1327.* (citation omitted).

The Seventh Circuit cites Indiana Code Section 22-9-1-11 (1998) for the proposition that "(t)he ICRC's investigation of complaints is discretionary, limited to those it `deems meritorious'. (App. D, p 10). The referenced statute provides:

> In addition to its power to investigate the discriminatory practices referred to in this chapter, the commission may receive written complaints of violation of this chapter or other discriminatory practices bases upon race, religion, color, sex, national origin, or ancestry and to investigate such complaints as it deems meritorious, or to conduct such investigation in the absence of complaints whenever it deems it in the public interest. It may transmit to the general assembly its recommendations for legislation designed to aid in the removing of such discrimination.
>
> I.C. §22-9-1-11. (emphasis added).

Chapter 1 of Indiana Code Section 22, Article 9, lists the following discriminatory practices:

> (1) the exclusion of a person from equal opportunities because of race, religion, color, sex, disability, national origin, or ancestry;
>
> (2) a system that excludes persons from equal opportunities because of race, religion, color, sex, disability, national origin, or ancestry;
>
> (3) the promotion of racial segregation or separation in any manner, including but not limited to the inducing of or the attempting to induce for profit any person to sell or rent any dwelling by

representations regarding the entry or prospective entry in the neighborhood of a person or persons of a particular race, religion, color, sex, disability, national origin, or ancestry; or

(4) a violation of IC 22-9-5 that occurs after July 25, 1992, and is committed by a covered entity (as defined in IC 22-9-5-4).

. . .

I.C. § 22-9-1-3 (l) (1-4).

The Section dictates that "(t)he commission shall receive and investigate complaints alleging discriminatory practices." I.C. § 22-9-1-6(c). (emphasis added). This directive remains unreconciled and of no effect on the record at hand.

b. Preempting Mr. Crenshaw's administrative charge pursuant to Indiana Code Section 22-9-1-11 (investigate such complaints as deemed meritorious), renders Indiana public accommodation provisions meaningless and sanctions conflict within Indiana civil rights law.

It is the public policy of the State of Indiana to provide all of its citizens equal opportunity for access to public conveniences and accommodations. *See*, I.C. § 22-9-1-2. Public accommodation means any establishment that caters or offers its services or facilities or goods to the general public. *See*, I.C. § 22-9-1-3(m). Every discriminatory practice relating to public accommodations is unlawful in the State of Indiana unless specifically exempted by its civil rights statute. *See*, I.C. § 22-9-1-3(l). Preempting the administrative charge prompting this petition pursuant to Indiana Code Section 22-9-1-11 (investigate such complaints as deemed meritorious), renders these public accommodation provisions meaningless and sanctions conflict within Indiana civil rights

law. The scant ambiguity clouding the mandate of Indiana Code Section 22-9-1-6(e) (shall receive and investigate), injected by Indiana Code Section 22-9-1-11 (investigate such complaints as deemed meritorious), hardly compels such a result. "(T)he law resolves ambiguous grants of power against administrative agencies." *Adkins v. City of Tell City*, 625 N.E.2d 1298 at 1302 (Ind. App. 1 Dist. 1993).

c. While either a prosecutor or judge analogy justifies quasi-judicial immunity in *Stanley v. Civil Rights Commission*, 557 F.Supp. 330 (N.D. Ind. 1983), *aff'd*, 740 F.2d 972 (7th Cir. July 30, 1984), both were rendered inapplicable when Ms. Crenshaw's administrative charge triggered the respondent's investigative function.

The United States Court of Appeals somewhat postures the respondents as prosecutors, capitalizing, in part, on this Court's sentiments:

> We believe that agency officials must make the decision to move forward with an administrative proceeding free from intimidation or harassment. Because the legal remedies already available to the defendant in such a proceeding provide sufficient checks on agency zeal, we hold those officials who are responsible for the decision to initiate or continue a proceeding subject to agency adjudication are entitled to absolute immunity from damages liability for their parts in that decision.
>
> *Butz v. Economou*, 438 U.S. 478 at 516 (1978).

The Seventh Circuit similarly parallels the respondents with judges:

> Here, the Commission members acted in a functionally adjudicatory capacity when they determined that they lacked jurisdiction to review and

> consider her complaint. *See Shannon v. Shannon*, 965 F.2d 542, 545 (7th Cir. 1992) (courts have authority to determine their jurisdiction). Officers and agencies that perform quasi-judicial functions are entitled to absolute immunity in order to protect their decision-making function from being impeded by fear of litigation or personal monetary liability. *See Thompson*, 882 F.2d at 1185. The Commissioner's assessment of the ICRC's jurisdiction to decide Crenshaw's charge is not less of a judicial function; it is "part and parcel" of the ICRC's adjudicatory function. *See Wilson v. Kelkhoff*, 86 F.3d 1438, 1444-45 (7th Cir. 1996) (prisoner review board members); *Thompson*, 882 F.2d at 1184 (parole board members). Since "immunity is justified and defined by the functions it protects and serves, not the person to whom it attaches," the Commissioners are entitled to absolute quasi-judicial immunity. *Forrester v. White*, 484 U.S. 219, 227 (1988). *See Thompson*, 882 F.2d at 1182.
>
> (App D, p 10-11).

While either the prosecutor or judge analogy justifies the outcome of *Stanley v. Civil Rights Commission*, 557 F.Supp. 330 (N.D. Ind. 1983), *aff'd*, 740 F.2d 972 (7th Cir. July 30, 1984), both were rendered inapplicable when Ms. Crenshaw's administrative charge triggered the respondent's investigative function.[1]

---

[1] The Seventh Circuit analogizes the respondents to judges assessing jurisdiction, essentially harkening back to its implicit determination that Ms. Crenshaw's administrative charge is not premised on civil rights guaranteed by Indiana Civil Rights Law. The civil rights within the jurisdiction of the Indiana Civil Rights Commission are those guaranteed by Indiana Civil Rights Law. *See*, 910 IAC 1-2-1(B). Alienating Ms. Crenshaw's complaint seemingly subjects it to preemption under Indiana Code Section 22-9-1-11 (1998) (investigate such complaints as deemed meritorious) and/or the respondent's inherent authority.

The respondents introduced the dichotomy between a determination of no jurisdiction and a decision to forego the exercise of jurisdiction, contending that "the decision whether to exercise jurisdiction over (the petitioner's) charge was of a judicial nature.". (Mtn to Dsms, Doc #16, p 1). (emphasis added). They acknowledge that Ms. Crenshaw "filed a charge of discrimination . . . invoking the Commission's jurisdiction to investigate . . ." (Sptng Memo, Doc #17, p. 1). Any such complaint, cognizable under Indiana Civil Rights Law, sufficiently complete within the meaning of Indiana Code Section 22-9-1-3, and disputed, compels "full investigation". *See*, 910 IAC 1-3-2-(a). The respondents did not have the prerogative to forego the process as to Ms. Crenshaw. *See*, I.C. § 22-9-1, *et. seq.* `(I)t is elementary that the authority of the State to engage in administrative action is limited to that which is granted by statute . . . ' *Charles A. Beard Ass'n v. Bd. of Trustees*, 668 N.E.2d 1222 at 1224 (Ind. 1996). (citation omitted).

II. The full investigation that Ms. Crenshaw allegedly did not receive, supports "a legitimate claim of entitlement" and is not a "needless formality" unworthy of federal litigation.

a. Ms. Crenshaw seeks to enforce a constitutionally protected liberty interest.

The Seventh Circuit notes:

> Even if we did not dispose of this case on immunity grounds, Crenshaw still would not prevail because she failed to allege a cognizable § 1983 claim.

(App D, p 11).

However, the maneuver is not sanctioned by Indiana principles of statutory construction and administrative law. Moreover, it does not shield the respondents from liability for thwarting the implementation of Indiana civil rights law.

It reports:

> Although her complaint and her appellate brief refer to many vague, generalized rights which she claims the Commissioners conspired to violate - i.e., her civil right to a full ICRC investigation of her charge, equal opportunity access to Judge Dywan's courtroom, an impartial tribunal before which to prosecute her ICRC charge - only her claimed right to "due process of law" is plausibly relevant to her § 1983 action.
>
> (App D, p 11).

The United States Court of Appeals concludes that Ms. Crenshaw "asserted nothing more than a right to process . . . " (App D, p 11).

"This Court rejected 'the notion that any grievous loss visited upon a person by the State is sufficient to invoke the procedural protections of the Due Process Clause.'" *Olim v. Wakinekona*, 461 U.S. 238 at 244 (1983). (citation omitted). However, the full investigation that Ms. Crenshaw allegedly did not receive, supports "a legitimate claim of entitlement" and is not a "needless formality" unworthy of federal litigation. *See, Id. at 250.* It invokes the following rule governing adjudicatory proceedings before the Indiana Civil Rights Commission:

> Based on the results of the investigation, the director shall determine whether probable cause exists to believe that an illegal act of discrimination did occur in violation of the Indiana Civil Rights Law, IC 22-9-1.
>
> 910 IAC 1-3-2(a). (emphasis added).

The respondent's disputed, administrative closure "was 'not within the range of (supposed adjudications) to which (the ICRC) subjects an individual,' because it brought about 'consequences . . . qualitatively different from the (merit finding) characteristically (received by complainants within the meaning of Indiana Code Section 22-9-1-3(n)(1))'." *See, Olim at 245.*

"The term `shall' in a statute is ordinarily to be used in its mandatory sense." *State Ex. Rel. Land v. Bd. of Trustees, Etc.*, Ind. App., 430 N.E.2d 791 at 794 (1982). "The rules applicable to construction of a statute apply also to construction of an administrative regulation." *Elliott at 777.* Accordingly, Ms. Crenshaw had a "justifiable expectation" that her referenced charge would be fully investigated and resolved on its merits. *See,* 910 IAC 1-3-2(a). "The Court of Appeals thus erred in attributing (insignificance) to the fact that (ICRC) regulations require (such an investigation and finding) before the (respondents) can (close a complaint, sufficiently complete within the meaning of Indiana Code Section 22-9-1-3)." *See, Olim at 250.* "(A) State creates a protected liberty interest by placing substantive limitations on official discretion." *Id. at 249.*

b. Ms. Crenshaw seeks to enforce a constitutionally protected property interest.

"(T)he Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be `the equivalent of denying them an opportunity to be heard upon their claimed right[s].'" *Logan v. Zimmerman Brush Co., et. al.*, 455 U.S. 422 at 429 (1982). Property as well as liberty interests are implicated:

> A claimant has more than an abstract desire or interest in redressing his grievance: his right to redress is guaranteed by the State, with the adequacy of his claim assessed under what is, in essence, a `for cause' standard, based upon the substantially of the evidence. And an (ICRC) claim, which presumably can be surrendered for value, is at least as substantial as the right to an education labeled as property in *Goss v. Lopez*, . . . Certainly, it would require a remarkable reading of a `broad and majestic ter[m],' *Board of Regents v. Roth*, 408 U.S., at 571, to conclude that a horse trainer's license is a protected property interest under the Fourteenth Amendment, while a state-created right to redress discrimination is not.

Logan at 430.

"(B)ecause `minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the (respondents) have specified (their) own procedures that (they) may deem adequate for determining the preconditions to adverse official action.'" *Id. at 432.*

The respondents cannot do what the Indiana legislature could not even empower them to do:

> While the legislature may elect not to confer a property interest, . . . it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards . . .
>
> Id. at 432. (citations omitted).

The respondent's *ad hoc* disposition of Ms. Crenshaw's administrative charge "presents an unjustifiably high risk that meritorious claims will be terminated." *See, Id. at 435.* It is outside of their rule and policy making authority. *See,* I.C. §22-9-1-6(c) & (d). "Where a statute prescribes specifically how an act shall be performed by an agency (*for eg.*, adopt rules under IC 4-22-2 to implement Indiana civil rights law; formulate policies to effectuate the purposes of Indiana civil rights law; etc.), or prohibits an agency action, an agency action that goes beyond its authority is void." *Teachers Ass'n v. Bd. of School Trustees,* 646 N.E.2d 988 at 994 (Ind. App. 5 Dist. 1995).

III. The respondents were not empowered to pursue any course of action rendering state public accomodation provisions meaningless and sanctioning conflict within Indiana civil rights law and are not entitled to immunity for doing so even in "assessing jurisdiction" over Ms. Crenshaw's discrimination charge.

For purposes of their motion to dismiss, the respondents concede acting with regard to the petitioner ". . . as part of a scheme to cover-up allegations of impropriety associated with the state courts of

Indiana". (*See*, Cmplt, Doc# 1 , ¶ 22, p 10). However, they are subject to liability in this case even if motivated by good faith at all relevant times. *See, Logan at 432.* Ms. Crenshaw encouraged the Seventh Circuit to consider their conduct as nonfeasance in reference to a ministerial duty. (See, Applnt's Brf, p 26). In any event, the respondents were not empowered to implement civil rights law as to her on an *ad hoc* basis. They certainly were not authorized to pursue a course of action that renders state public accomodation provisions meaningless and sanctions conflict within Indiana civil rights law.

"(A) judge of a court of general jurisdiction is subject to civil liability . . . if he or she (acts) 'in the clear absence of all jurisdiction'." *Hupp v. Hill*, 576 N.E.2d 1320 at 1324 (Ind App 1 Dist 1991). This Court confirmed that limitation on judicial immunity in 1991. *See, Mireles v. Waco*, 502 U.S. 9 at 11 (1991). Logically, quasi-judicial immunity does not encompass more even it otherwise reaches the administrative action in dispute. The respondents were not empowered to pursue any course of action rendering state public accommodation provisions meaningless and sanctioning conflict within Indiana civil rights law and are not entitled to immunity for doing so even in "assessing jurisdiction" over Ms. Crenshaw's discrimination charge.

Conclusion

Indiana principles of statutory construction and administrative law sanction redress for the alleged violation of Ms. Crenshaw's constitutionally protected liberty and property interests. The state law supplies pivotal rules of decision. *See, West v. American Telephone & Telegraph Co.*, 311 U.S. 223 at 236 (1940) and 28 U.S.C § 1652 (Rules of Decision Act). "State law is to be applied in the federal as well as the state courts and it is the duty of the former in every case to ascertain from all the available data what the state law is and apply it rather than prescribe a different rule . . . " *Id. at 237.*

For the foregoing reasons, your petitioner prays that this Court exercise its power of supervision to insure the proper functioning of the federal judiciary; address the important federal questions presented by this petition; resolve the referenced conflict between this case and

Indiana law; as well as the conflict between this case and applicable precedent of this Court.

RESPECTFULLY SUBMITTED,

Zena D. Crenshaw, *Petitioner Pro Se*
CRENSHAW PROFESSIONAL OFFICES
4581 Broadway Gary, IN 46409
(219)980-2055 [fax](219)887-8109

APPENDIX A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ZENA CRENSHAW,	)	
	)	
Plaintiff,	)	
v.	)	No. IP 98-0569-C-H/G
	)	
BERRY BAYNERD, et. al.,	)	
	)	
Defendants.	)	

JUDGMENT

The court, having this day made its Entry,

IT IS THEREFORE ADJUDGED that this cause of action is dismissed with prejudice.

DAVID F. HAMILTON, Judge
United States District Court

Date: 7/14/98

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ZENA CRENSHAW,	)	
	)	
Plaintiff,	)	
v.	)	No. IP 98-0569-C-H/G
	)	
BERRY BAYNERD, et. al.,	)	
	)	
Defendants.	)	

ENTRY DISCUSSING MOTION TO DISMISS

This cause is before the court on the plaintiff's complaint, on the defendants' motion to dismiss and on the plaintiff's response to ~~the~~ motion to dismiss.

Whereupon the court, having read and examined such complaint, motion and response, and being duly advised, now finds for the reasons explained in this Entry that the defendants' motion to dismiss must be **granted.**

I. Background

Plaintiff Crenshaw filed a charge with the Indiana Civil Rights Commission ("ICRC") on or about July 10, 1997, alleging that Lake Superior Court Judge Dywan entered sanctions against Crenshaw, an attorney, in a proceeding docketed as No. 45D01-9312-CT-1805, motivated by unlawful race and/or sex discrimination. This charge with the ICRC was docketed as No. PAse97060461.

On November 5, 1997, the ICRC ruled that the charge in No. PAse97060461 would be administratively closed. The ICRC explained this disposition in the following language:

Complainant is disputing the ruling of a Superior court.

> The Indiana Civil Rights Commission does not have the authority to overrule the decision of the Superior Court. Even if the Commission had jurisdiction, the evidence failed to show that race and sex had anything to do with the decision made by the judge.

The action of November 5, 1997, was followed by the issuance of a "Corrected Notice" by the ICRC on November 20, 1997. This Corrected Notice recited the following:

> Complainant is disputing the ruling of a Superior Court. The Indiana Civil Rights Commission does not have the authority to overrule the decision of the Superior Court.

Crenshaw appealed this determination, which was upheld through the written ruling of Alpha Blackburn issued on Mary 27, 1998, which ruling was in turn adopted by the entire ICRC the same date.

Crenshaw then filed the present action on April 28, 1998. She has sued the individual members of the ICRC, alleging that they wrongfully failed to conduct a full investigation of the charge in No. PAse97060461. She seeks unspecified compensatory and punitive damages.

II. Discussion

The defendants argue in their motion to dismiss that Crenshaw's complaint fails to state a claim upon which relief can be granted. *Fed. R. Civ. P.* 12(b)(6) authorizes dismissal of complaints that state no actionable claim. For purposes of a motion to dismiss pursuant to Rule 12(b)(6), all well-pleaded allegations are presumed to be true. *Whirlpool Financial Corp. v. GN Holdings, Inc.*, 67 F.3d 605, 608 (7th Cir. 1995); *McTigue v. City of Chicago*, 60 F.3d 381, 382 (7th Cir. 1995). A court must view those allegations in the light most favorable to the plaintiff, *Gould v. Artisoft, Inc.*, 1 F.3d 544, 546 (7th Cir. 1993), and accept as true all reasonable inferences to be drawn from those allegations. *Whirlpool Financial Corp.*, 67 F.3d at 608; *McTigue*, 60 F.3d at 382. Dismissal of a complaint for failure to state a claim is granted only if "it appears beyond doubt that the plaintiff can

prove no set of facts in support of his claim which would entitle him to relief." *Richmond v. Nationwide Cassel L. P.*, 52 F.3d 640, 644 (7th Cir. 1995) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 101-02 (1957); *Chaney v. Suburban Bus Division of the Regional Transportation Authority*, 52 F.3d 623, 627 (7th Cir. 1995).

"In *Butz v. Economou*, 438 U.S. 478, 98 S. Ct. 2894, 57 L.Ed.2d 895 (1978), the Supreme Court extended the protective blanket of absolute immunity to federal agency officials who perform functions comparable to those of the judge and prosecutor: hearing examiners (administrative law judges), agency officials who decide to initiate or continue administrative proceedings, and agency attorneys who present the evidence to the hearing officers." *Scott v. Schmidt*, 773 F.2d 160, 164 (7th Cir. 1985). Members of the ICRC are entitled to absolute quasi-judicial immunity actions taken in the course of their adjudicative function, *Stanley v. Indiana Civil Rights Comm'n*, 557 F.Supp. 330, 334 (N.D.Ind. 1983), and the court does not understand Crenshaw to be arguing otherwise.

What Crenshaw does argue, however, is that the defendants did not perform the investigative tasks which they are required to undertake as a matter of Indiana law. Crenshaw's argument elevates form over substance on this point, which is precisely what the doctrine of quasi-judicial immunity eschews.

The ICRC determined that the nature of Crenshaw's complaint was a challenge to the ruling of an Indiana state court. The ICRC then determined that it had no authority to determine whether the challenged ruling was tainted by illegal race or gender-based motives. These determinations may not have required much of a fact-based "investigation," but there is no doubt that the ICRC assessed Crenshaw's complaint and through that assessment - the "investigation" which Crenshaw seems to contend was skipped - performed the adjudicative task for which its members are entitled to absolute immunity.

III. Conclusion

If a plaintiff pleads facts which show that she has no claim, then she has pleaded herself out of court. *Early v. Bankers Life &*

Casualty Co., 959 F.2d 75, 78 (7th Cir. 1992); *Conn v. GATX Terminals Corp.*, 18 F.3d 417, 419 (7th Cir. 1994). That is the case here.

Judgment consistent with this Entry shall now issue.

So ordered.

DAVID F. HAMILTON, Judge
United States District Court

Date: 7-14-98

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ZENA CRENSHAW,	)	
	)	
Plaintiff,	)	
v.	)	No. IP 98-0569-C-H/G
	)	
BERRY BAYNERD, et. al.,	)	
	)	
Defendants.	)	

ENTRY DISCUSSING SELECTED MATTERS

The court, having reviewed the above action, now makes the following rulings:

1. The motion to amend findings filed by the plaintiff was filed within ten (10) working days from the entry of judgment on the clerk's docket, and hence is treated as amotion to alter or amend judgment pursuant to Rule 59(e) of the *Federal Rules of Civil Procedure. Retired Chicago Police Ass'n v. City of Chicago,* 76 F.3d 856, 862 n.1 (7th Cir.), *cert. denied,* 117 S.Ct. 305 (1996); *Russell v. Delco Remy Div. of Gen. Motors Corp.*, 51 F. 3d 746, 750 (7th Cir. 1995).

2. Rule 59(e) "authorizes relief when a moving party `clearly establish[es] either a manifest error of law or fact' or `present[s] newly discovered evidence.'" *Souter v. International Union,* 993 F.2d 595, 599 (7th Cir. 1993) (quoting *Federal Deposit Ins. Corp. v. Meyer,* 781 F.2d 1260, 1268 (7th Cir. 1986)). The motion to amend findings is **denied.** The reasons for this ruling are that the court's recitation of the issues and resolution of them in this case were correct. There was no manifest error of law or fact in the disposition here, and no new evidence has been submitted.

So ordered.

DAVID F. HAMILTON, Judge
United States District Court

Date: 8-3-98

APPENDIX D

In the
United States Court of Appeals
for the Seventh Circuit

No. 98-3156

Zena D. Crenshaw,

Plaintiff-Appellant,

v.

Berry Baynerd, Alpha Blackburn,
David A. Carter, *et al.*,

Defendants' Appellees.

Appeal from the United States District Court
for the Southern District of Indiana, Indianapolis Division.
No. 98 C 569 - **David F. Hamilton,** *Judge.*

Argued March 3, 1999 - Decided June 14, 1999

Before Eschbach, Kanne, Evans *Circuit Judges.*

Kanne, *Circuit Judge.* Zena D. Crenshaw, an attorney licensed in Indiana, sued the seven members of the Indiana Civil Rights Commission pursuant to 42 U.S.C. §1983, alleging that they violated her due process rights when they dismissed her charge of race and sex discrimination filed against an Indiana state judge who had sanctioned her in another case. The district court, finding the defendants immune from suit, dismissed her complaint, and Crenshaw appeals. We affirm.

I.

In 1997, Indiana Superior Court Judge Jeffrey J. Dywan sanctioned Crenshaw more than $14,000 for arguing frivolous claims in her capacity as plaintiffs' counsel in a civil case before him. Alleging

that Judge Dywan's sanction stemmed from discrimination against her because she was African-American and a woman, Crenshaw filed a charge against him with the Indiana Civil Rights Commission ("ICRC"). The ICRC is a body authorized by state statute to receive and investigate complaints alleging discriminatory practices. *See* Ind. Code § 22-9-1-6(e) (1998). The ICRC dismissed the charge. The Commission found that Crenshaw sought to dispute a Superior Court ruling, and that the ICRC lacked authority to overrule a decision of the Superior Court. Crenshaw appealed the dismissal to the full Commission, which upheld the finding and dismissed her charge.

Crenshaw then brought this lawsuit under § 1983 against the seven Commissioners of the ICRC in their personal capacities. She alleged that since her charge against Judge Dywan met the statutory requirements of form and content, the ICRC was obligated to investigate it. Crenshaw alleged that in choosing not to investigate, the Commissioners participated in a "scheme to cover-up allegations of impropriety associated with the state courts of Indiana." Further, she alleged that because they dismissed her charge, the Commissioners contravened Indiana public policy and deprived her of the right to have her charge investigated, her right to an impartial tribunal, and unbiased and equal access to Judge Dywan's courtroom. Finally, she alleged that the defendants' actions caused her to suffer inconvenience, mental suffering and monetary expense.

The district court dismissed the complaint with prejudice. It found that the Commission members function in an adjudicative capacity and were therefore entitled to absolute quasi-judicial immunity from civil suit. Rejecting Crenshaw's argument that the ICRC did not perform their required investigative tasks, the court observed that Crenshaw's argument was "precisely what the doctrine of quasi-judicial immunity eschews." The court subsequently denied Crenshaw's Fed. R. Civ. P. 59 (e) motion to alter or amend the judgment.

II.

We review de novo the district court's dismissal of an action for failure to state a claim. *Porter v. DiBlasio*, 93 F.3d 301, 305 (7th Cir. 1996). In so doing, we construe Crenshaw's well-pleaded allegations as true and draw all reasonable inferences in the light most favorable to

her. *Id.* Dismissal is appropriate when there is no set of facts that Crenshaw can prove which will entitle her to relief. *See Fries v. Helsper,* 146 F.3d 452, 456 (7th Cir. 1998).

On appeal, Crenshaw argues that in not investigating her complaint against Judge Dywan, the Commissioners failed to follow Indiana state law and were actually seeking "other ends" rather than implementing the Indiana Civil Rights Law, thereby depriving her of her constitutional right to due process. Further, Crenshaw takes issue with the district court's determination that the defendants are immune from liability. Since a public officer is not individually liable for her performance of discretionary acts, but may be liable for "non-feasance of a ministerial act," Crenshaw accuses the Commission members of "nonfeasance" and argues that they are not entitled to immunity because they were derelict in their "ministerial duty" and did not perform an adjudicatory function. *See Adden v. Middlebrooks,* 688 F.2d 1147, 1152-53 (7th Cir. 1982) (discussing public officer's individual liability for nonfeasance of ministerial act).

Crenshaw's argument is unpersuasive. Crenshaw is not entitled to relief because the Commissioners are immune from liability, and "absolute immunity defeats a suit at the outset so long as the official's actions were within the scope of the immunity." *Imbler v. Pachtman,* 424 U.S. 409, 419 n. 13 (1976). The ICRC is a quasi-judicial adjudicatory body; the Commission members, although not members of a court, perform duties functionally comparable to those of a judicial officer. *See* Ind. Admin. Code tit. 910, r. 1-2-1 (1998); Ind. Code § 22-9-1-6(i) (1998); *Stanley v. Indiana Civil Rights Comm'n,* 557 F. Supp.330, 334-35 (N.D. ind. 1983), *aff'd,* 740 F.2d 972 (7th Cir. July 30, 1984) (unpublished disposition). *See also Thompson v. Duke,* 882 F.2d 1180, 1183 (7th Cir. 1989) and *Scott v. Schmidt,* 773 F.2d 160, 164 n.4 (7th Cir. 1985) (both approving citing the *Stanley* decision). The ICRC's investigation of complaints is discretionary, limited to those it "deems meritorious." Ind. Code § 22-9-1-11 (1998).

Here, the Commission members acted in a functionally adjudicatory capacity when they determined that they lacked jurisdiction to review and consider her complaint. *See Shannon v. Shannon,* 965 F.2d 542, 545 (7th Cir. 1992) (courts have authority to determine their jurisdiction). Officers and agencies that perform quasi-judicial

functions are entitled to absolute immunity in order to protect their decision-making function from being impeded by fear of litigation or personal monetary liability. *See Thompson*, 882 F.2d at 1185. The Commissioner's assessment of the ICRC's jurisdiction to decide Crenshaw's charge is not less of a judicial function; it is "part and parcel" of the ICRC's adjudicatory function. *See Wilson v. Kelkhoff*, 86 F.3d 1438, 1444-45 (7th Cir. 1996) (prisoner review board members); *Thompson*, 882 F.2d at 1184 (parole board members). Since "immunity is justified and defined by the functions it protects and serves, not the person to whom it attaches," the Commissioners are entitled to absolute quasi-judicial immunity. *Forrester v. White*, 484 U.S. 219, 227 (1988). *See Thompson*, 882 F.2d at 1182.

Even if we did not dispose of this case on immunity grounds, Crenshaw still would not prevail because she failed to allege a cognizable § 1983 claim. Although her complaint and her appellate brief refer to many vague, generalized rights which she claims the Commissioners conspired to violate - i.e., her civil right to a full ICRC investigation of her charge, equal opportunity access to Judge Dywan's courtroom, an impartial tribunal before which to prosecute her ICRC charge - only her claimed right to "due process of law" is plausibly relevant to her § 1983 action. She argues that the defendants violated her right to due process, presumably under the Fourteenth Amendment, because they dismissed her complaint without complying with what she perceives to be an Indiana statutory mandate to investigate all charges filed with the ICRC. *See* Ind. Code § 22-9-1-6(e) (1998).

But this assertion is not sufficient to raise a procedural due process claim. Such a claim requires Crenshaw to identify a property interest, *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972) or a state-created liberty interest, *Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 459-62 (1989) of which she was allegedly deprived, and she identified neither. In short, she has asserted nothing more than a right to process, and the mere expectation of receiving a state-afforded process does not establish either an independent liberty or property interest protected by the Due Process Clause. *Olim v. Wakinekona*, 461 U.S. 238, 250-51 (1983); *Wikberg v. Reich*, 21 F.3d 188, 190 (7th Cir. 1994). Unless a federal right is contravened, the regulation of the state adjudicatory proceedings is the "business of the states." *Nowicki v. Cooper*, 56 F. 3d 782, 785 (7th Cir. 1995). Because Crenshaw's

claims do not amount to violations of the Constitution or of federal law by state actors, they are not cognizable under § 1983. *Kentucky v. Graham*, 473 U.S. 159, 166 (1985).

We note, furthermore, that Crenshaw has already received a remedy for what she perceived as Judge Dywan's improper sanctions against her and her client. At oral argument Crenshaw revealed for the first time that the sanctions had been reversed by the Indiana Court of Appeals. *Crenshaw, Sanchez, et. al. v. Hoffman-LaRoche, Inc.*, No. 45A03-9709-CV-306 (Ind. Ct. App. Aug. 18, 1998) (unpublished disposition).

Because the Commissioners perform a quasi-judicial adjudicatory role, they are entitled to immunity. Accordingly, we AFFIRM the district court's dismissal of her suit. We decline defendant's request to sanction Crenshaw.

AFFIRMED.